

APR 18 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN BAUTISTA HIGUERA-CECENA,

Defendant - Appellant.

No. 02-50176

D.C. No. CR-01-03048-JSR

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
John S. Rhoades, District Judge, Presiding

Argued and Submitted February 12, 2003
Pasadena, California

Before: B. FLETCHER, HAWKINS, Circuit Judges, and BURY, District Judge.**

Juan Bautista Higuera-Cecena appeals his conviction for importation of marijuana, in violation of 21 U.S.C. §§ 952 and 960, and for possession of

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** Hon. David C. Bury, United States District Judge for the District of Arizona, sitting by designation.

marijuana with intent to distribute, in violation of 21 U.S.C. § 841. Higuera-Cecena raises three claims on appeal: (1) his Sixth Amendment and due process rights were violated by the district court's refusal to permit evidence that the customs agent, in an unrelated case, used lies to obtain an involuntary confession; (2) the agent's lies to Higuera-Cecena rendered his confession involuntary; and (3) 21 U.S.C. §§ 841 and 960 are facially unconstitutional under Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348 (2000). The district court is affirmed.

The district court did not abuse its discretion by excluding, pursuant to Fed. R. Evid. 403, evidence of the custom agent's lies to a different defendant in an unrelated case. United States v. Ross, 206 F.3d 896, 898 (9th Cir. 2000). While the district court improperly limited Higuera-Cecena's cross-examination of the agent, such error was harmless in light of the testimony Higuera-Cecena elicited regarding the agent's deceptive interview techniques, and any such limitation did not contribute to the jury's verdict. See Neder v. United States, 527 U.S. 1, 7-8, 119 S.Ct. 1827, 1832-33 (1999). Furthermore, considering the totality of the circumstances, we conclude that Higuera-Cecena's confession was voluntary, despite the agent's lies. See Amaya-Ruiz v. Stewart, 121 F.3d 486, 494-95 (9th Cir. 1997). Finally, Higuera-Cecena's challenge to the constitutionality of 21

U.S.C. §§ 841 and 960 is foreclosed by United States v. Hernandez, 314 F.3d 430, 437 (9th Cir. 2002).

AFFIRMED.